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Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 13 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations,
(Latta, Marion, and Camden, South
Carolina)

) MM DOCKET NO. 93-47

) RM-8188

) RM-8243

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

CONSOLIDATED REPLY TO OBJECTIONS

1. In both of his Objections, Ranke objects to Petitioner's motions to dismiss³ and/or strike⁴ all of his pleadings to date for their failure to contain the proper verification as required by §1.52 of the Rules. Ranke argues that he corrected this procedural flaw by submitting a "verification," admittedly late, with his "Suppliment [sic] To Responsive Comments" filed June 24, 1993. See July 3rd Objection at pp. 2-3. However, as Petitioner has already shown, because Ranke's statement was not made under penalty of perjury, as required by §1.16 of the rules, his statement was not legally sufficient. In his July 8th Objection, Ranke again attempts to correct this additional flaw. Ranke's latest remedial attempt is too little, too late. Ranke cannot now undo a procedural flaw which was contained in all of his pleadings to date.⁵

2. In his July 3rd Objection, Ranke disagrees, arguing that his failure to submit a timely verification is excusable, citing two recent Commission decisions, Lahoma,

³ Filed June 24, 1993.

⁴ Filed June 30, 1993.

⁵ Likewise, the fact that Ranke has put forth an "expression of interest" in this proceeding, in continued support of his Counterproposal, does not mean, as Ranke suggests, that the Commission could imply that all of his filings to date have been made under oath. See July 8th Objection at p. 4. If such were the case, then there would be no need for §§1.16 or 1.52 of the Rules and the Commission would never dismiss a filing for failure to include the proper verification. Such is clearly not the law. See Flora and Kings, Mississippi and Newellton, Louisiana, 7 FCC Rcd 5477, n. 4 (1992).

Oklahoma, DA 93-530, n. 1, released June 3, 1993 and Chillicothe, Missouri, DA 93-674, n. 1, released June 22, 1993. However, in each of the two cases cited by Ranke, the defaulting party failed to include the proper verification in its original petition for rulemaking. Id. Rather than dismiss the petitions, the Commission permitted each party to correct this deficiency in their original comments in the rulemaking proceeding. Id.; see also Estes Park, Colorado, DA 93-730, n. 1, released July 8, 1993. In those cases, there was no harm in permitting a late verification to be submitted, since neither petition for rulemaking was mutually exclusive with another rulemaking proposal and there would be no resulting prejudice to the rights or interests of other rulemaking proponents.

3. In vivid contrast, in this case, Ranke failed to include a proper verification in his Counterproposal. Moreover, unlike the rulemaking petitions in the cited cases, Ranke's Counterproposal is mutually exclusive with Petitioner's original rulemaking proposal and must be held

~~to a strict procedural standard to permit Ranke to~~

California 6 FCC Reg 5017 (1001) and Report and Order

"Responsive Comments" and "Suppliment" and all other pleadings filed to date be **STRICKEN**.

Respectfully submitted,

WINFAS OF BELHAVEN, INC.

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: _____
Gary S. Smithwick
Shaun A. Maher
Its Attorneys

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July 13, 1993

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 13th day of July, 1993, copies of the foregoing were mailed, postage prepaid, to the following:

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